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ATTORNEYS FOR APPELLEE:

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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 48A04-0801-CR-027

FRIEDLANDER, Judge

Jayson Speece appeals the revocation of his probation and the execution of his previously suspended sentence. He presents the following restated issues for review:

1. Did the State present sufficient evidence that Speece violated his probation?
2. Did the revocation court err in executing the entire term of the suspended sentence?

We affirm.

The facts favorable to the revocation are that on November 26, 2001, Speece pleaded guilty to prisoner possessing dangerous device, a class B felony. He was sentenced to seven years in prison, with three of those years suspended to probation.

Around 12:30 a.m. on June 23, 2007, Speece instigated a fight with Michael Gee at the Centerfield Bar in Blackford County. While playing pool with Gee's wife, Speece told Gee to tell his wife to "stop shaking...her butt in front of his face." *Transcript* 73. Speece then pursued the couple as they began to leave the bar. After a brief verbal exchange, Speece lunged at Gee to strike him. Gee dodged the punch and then struck Speece in the face. Speece proceeded to stab Gee multiple times as Gee tried to fight him off. Gee was stabbed seventeen times and had to be life-lined to Methodist Hospital in Indianapolis. Speece admitted to police that the knife was his, but claimed he only used it in self-defense.

On June 28, 2007, a notice of violation of probation was filed, alleging that Speece had committed aggravated battery and battery with a deadly weapon. The State subsequently amended the allegations to include possession of a deadly weapon, violation of curfew, and using alcohol. Following the probation revocation hearing, the court revoked Speece's

probation and ordered him to serve the full three years of his previously suspended sentence.

In revoking Speece's probation, the court stated in part:

[O]n the alcohol use, there is not going to be a finding adverse to you on that Mr. Speece. On the Possession of a Deadly Weapon, it's hard to claim that a knife that inflicts seventeen different wounds on a person who loses half of his blood mass who is put in a medical coma for thirty six hours, who has to have his spleen removed and his liver repaired, it's hard to argue that such an instrument is not a deadly weapon. It clearly is, and so you were in Possession of a Deadly Weapon and you used it as a deadly weapon. So Mr. Speece was in Possession of a Deadly Weapon. Curfew violation, [the prosecutor] is absolutely right. The first Officer Hurd indicated that the dispatch, the original dispatch about the fight and the problems at the Centerfield Bar was at 12:30, about 12:30 a.m., give or take five minutes, ten minutes, clearly Mr. Speece was out after curfew.... There is no way you escape a conclusion here that you were engaged, and at the very least, mutual combat, and you are responsible for the decisions you made. The evidence from Law Enforcement, which are the only independent witnesses in my assessment here, simply don't support the conclusion that Mr. Speece was getting a beating. There just isn't evidence to support that. Now, it's possible Mr. Gee may have been the initial aggressor, but, but Mr. Speece participated in that. There is no evidence to support that he was an, that he didn't do so voluntarily, in fact, the, the better evidence is that he was participating voluntarily and there is no way that you have to stab a person seventeen times to get him to leave you alone. So you were, at the very least, involved in a Battery, knowingly, voluntarily, you were a participant. You committed a Battery yourself even though Mr. Gee may have also committed a Battery.

Id. at 125-27.

1.

Speece initially claims the State failed to present sufficient evidence he violated probation by a preponderance of the evidence.

Probation is a matter of grace and is a conditional liberty that is a favor, not a right. *See Kincaid v. State*, 736 N.E.2d 1257 (Ind. Ct. App. 2000). The trial court determines the conditions of probation and may revoke probation if the probationer violates a condition of

probation. *Id.* A trial court's order regarding revocation of probation is reviewed for an abuse of discretion. *Johnson v. State*, 692 N.E.2d 485 (Ind. Ct. App. 1998). Further, a probation hearing is civil in nature, and the State must prove the alleged violation of probation by a preponderance of the evidence. *Braxton v. State*, 651 N.E.2d 268 (Ind. 1995). On review, we neither reweigh the evidence nor judge the credibility of witnesses, and we look only to the evidence most favorable to the State. *Id.* We look to the evidence most favorable to the court's judgment and determine whether there is substantial evidence of probative value supporting revocation. *Marsh v. State*, 818 N.E.2d 143 (Ind. Ct. App. 2004). If so, we will affirm. *Id.*

With respect to the curfew violation and possession of a deadly weapon, Speece asserts the evidence was "conflicting". *Appellant's Brief* at 12. Even assuming the evidence was conflicting with respect to these two violations, which it was not, Speece's argument amounts to a blatant request for us to reweigh the evidence. We reject this invitation. *See Braxton v. State*, 651 N.E.2d 268.

Concerning the battery, Speece's entire argument follows:

Speece contends that substantial evidence supported his self-defense claim and thus was not sufficient evidence to violate his probation; particularly considering the victim's misrepresentations about his level of intoxication and motivation and bias based on his pending civil suit against the bar.

Appellant's Brief at 12. Once again, we reject the invitation to reweigh the evidence and judge Gee's credibility. Gee testified that he was stabbed seventeen times after Speece instigated a fight with him at a bar. This was sufficient evidence to find by a preponderance

of the evidence that Speece committed battery. The evidence clearly supports a finding that Speece violated the terms of his probation.

2.

Speece argues the court abused its discretion by ordering him to execute his entire suspended sentence. He notes that he had been on probation for over two years before the battery without incident, had maintained full-time employment, and has a fiancé and a child to support. He asks that we permit him to serve his sentence at the Madison County Work Release Center instead of the Department of Correction.

Indiana Code Ann. § 35-38-2-3(g) (West, PREMISE through 2007 1st Regular Sess.) provides that upon finding a violation of probation, a trial court may “order execution of all or part of the sentence that was suspended at the time of initial sentencing.” We review the trial court’s decision for an abuse of discretion. *Goonen v. State*, 705 N.E.2d 209 (Ind. Ct. App. 1999). Speece has wholly failed to establish an abuse of discretion in this regard. *See id.*

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur